

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 334 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

M/S A J MEDICAL AGENCY

Appearance:

PUBLIC PROSECUTOR for Petitioner

MR MC SHAH for Respondent No. 1, 2, 3(Absent)

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 06/08/96

ORAL JUDGEMENT

The State has preferred this acquittal appeal against the the judgment and order dated January 17,1989 passed by the learned Judicial Magistrate, First Class,

Vijapur, in Criminal Case No.361/88. By the impugned order, the learned Magistrate ordered to acquit the respondent-accused persons for the offences under section 28(c),28(a)(c),18(a),18(b) read with Rules 27,28 and 28(a) of the Drugs and Cosmetics Act,1940.Respondent No.1,M/s.A.J.Medical Agency, is owned by respondent No.2, Shri anwarbeg Roshanbeg Mogal.Respondent No.3, Shri Ahmadbeg Roshanbeg, has been conducting and in charge of the respondent No.1-firm . All these respondents are the accused persons for the aforesaid offences under the Drugs and Cosmetics Act. It is the prosecution-case that the accused persons and the firm were found to be in possession and stock of the drugs without there being proper purchase bill for the same and also with drugs marked with ESI Govt of Gujarat, which were not meant to be sold. It is also alleged that the respondents failed to furnish requisite details and particulars as to from whom they have purchased all these drugs. It is also alleged that the accused persons failed to produce the necessary bills and records of purchase in respect of the drugs not covered under the licence. The accused persons are thus alleged to have committed the aforesaid offences under the Drugs and Cosmetics Act,1940.

The charge Exh.32 was framed on the aforesaid facts and offences to which the accused persons pleaded not guilty.

The learned Magistrate having recorded the evidence of the prosecution witnesses and on basis of other materials on record, came to the conclusion that the guilt of the accused persons was not brought home and ordered to acquit the accused persons.

Mr.S.T.Mehta, learned Addl.Public Prosecutor, appearing for the appellant-State, has taken me through the relevant record and the judgment under appeal.He contended that in viewof the evidence of the complainant,P.W.1, Bhartkumar Pyarelal Soni, Exh.9, and on basis of the allegations made in the complaint Exh.1,the learned Magistrate committed error in law in recording the order of acquittal. Considering the evidence adduced before the Court below and other documentary evidence on record, I am unable to accept the submission of Mr.Mehta that there is infirmity in the impugned acquittal order and/or findings recorded by the learned Magistrate are perverse in any way.P.W.1 Shri

Bharatbhai Soni, the complainant, having collected the drugs at Sr.Nos.17 and 18, as per the complaint, sent the same to the Public Analyst, Vadodara, for analysis. The office copy of the report sent by the complainant is produced at Exhs.13 and 14, whereas the analysis reports are produced at Exhs.15 and 16. According to these reports, the drugs at items Nos.17 and 18 were not found to be adulterated. However, it is not understood as to why such report was necessary, in view of the allegations made against the accused persons.

It is alleged that P.W.1 Bharatkumar P.Soni prepared the Panchnama at Exh.28 in respect of sample drugs which were collected from the shop of accused No.1. However, the Panch witness, Bapusinh Udesinh Exh.27 and other Panch witness Vinodsinh Babulal Prajapati, Exh.29, have not supported the Panchnama Exh.28. Both these Panch witnesses have deposed that when they were standing in the crowd collected near Vijapur Rest House, the complainant called them and inquired if they knew the accused No.1 and if so they were requested to sign the Panchnama Exh.28. Thus, the Panchnama was signed at the instance of the complainant. They did not know about the contents of the Panchnama. The other Panch witness, Vinodkumar Babulal, Exh.29, has deposed that he has merely signed the Panchnama not knowing about the contents thereof. Both these Panch witnesses were treated as hostile witnesses. However, the fact remains that the Panch witnesses have not proved the contents of the Panchnama Exh.28. It appears that some of the drugs were collected by three Inspectors of the Intelligence Branch of the department at Gandhinagar. However, the Prosecution has not examined any of them. As is recorded by the learned Magistrate, it is clear that the Panchnama was not prepared and written as and when the muddamal of drugs was collected. It is not understood that though the complainant had information of all the three Inspectors of Intelligence Branch at Gandhinagar, why they were not examined by the prosecution. The sample drugs were collected as per Exh.11 and a receipt was passed as per Exh.12. In the said documents, the signatures of the Panchas appear to have been obtained later on. P.W.1, Bharatkumar P.Soni, the complainant, has not mentioned anywhere in his evidence that at the time of raid, all the three Inspectors of Intelligence Branch or any of them were present in the shop of accused No.1. The learned Magistrate has recorded that after examination of the complainant, many more dates were obtained for the purpose of recording the evidence of all these three

Inspectors of Intelligence Branch, Gandhinagar. However, none of them was examined by the prosecution. The complainant has admitted in his cross-examination that in the complaint and in the Panchnama and Forms No.16 and 17, the signatures are different. He did not agree to send Form No.16, which seems to be bearing the handwriting of complainant, to Handwriting Expert for the purpose of identification. He could not say as to whose handwritings were in documents at Sr.Nos.22 and 23. In view of this evidence on record, the prosecution cannot be said to have established its case beyond reasonable doubt against the accused persons. When the Panch witnesses have not supported the prosecution-case, nor the Panchnama Exh.28 is duly proved and when there are contradictions in the evidence of the complainant-Food Inspector, Shri Bharatkumar P. Soni, the corroboration from independent witness was necessary and as such it would not be safe to rely only on the evidence of the complainant-Drug Inspector.

Considering the impugned judgment, there is no infirmity in the order of acquittal, nor any case is made out by the learned Addl. Public Prosecutor to interfere with the finding of acquittal recorded by the learned Magistrate.

In the result, the appeal fails and is dismissed.
